shipments having been made by the Doughnut Corporation of America; and charging that they were adulterated in that they consisted in whole or in part of filthy substances by reason of the presence of various types of filth such as insects, larvae, insect fragments, and weevils. The articles were labeled in part: "Downyflake Fixt Ginger Muffin Mix [or "Biscuit Mix," or "Waffle Mix"]," "Downyflake Fixt Mix * * * Spice Muffin [or "Bran Muffin"]," "Ginger Bread Doughnut Mixture," or "Special Coffee Cake Mix."

On August 26 and September 21 and 30, 1943, and February 18, 1944, no claimant having appeared, judgments of condemnation were entered and the products seized at Jamestown, N. Y., and Columbia, S. C., were ordered destroyed, and those seized at Houston, Tex., were ordered converted into animal feed.

MISCELLANEOUS CEREALS AND CEREAL PRODUCTS

5633. Adulteration of Economalt. U. S. v. 3 Bags of a Wheat Product. Decree of condemnation and destruction. (F. D. C. No. 10884. Sample No. 34272–F.)

On October 6, 1943, the United States attorney for the Western District of Pennsylvania filed a libel against 3 bags, each containing 100 pounds, of a wheat product at New Castle, Pa., alleging that the article had been shipped on or about October 30, 1942, by the Kansas Milling Company from Wichita, Kans.; and charging that it was adulterated in that it consisted in whole or in part of a filthy substance because of the presence of insect excreta pellets, webbing, insects, and larvae. The article was labeled in part: (Bags) "Bakers Economalt Non-Caking Made From Wheat * * * Cereal Research Laboratories Wichita, Kansas."

On November 10, 1943, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

5634. Adulteration of popcorn. U. S. v. 289 Bags of Pop Corn. Consent decree of condemnation. Product ordered released under bond to be brought into compliance with the law. (F. D. C. No. 12486. Sample No. 53667–F.)

On May 31, 1944, the United States attorney for the Southern District of California filed a libel against 289 bags of popcorn at Los Angeles, Calif., alleging that the article had been shipped in interstate commerce on or about January 20, 1944, by the J. A. McCarty Seed Co. from Evansville, Ind.; and charging that it was adulterated in that it consisted in whole or in part of a filthy substance by reason of the presence of rodent excreta. The article was labeled in part: (Bags) "Mellos' Block Buster Brand Pop Corn Mellos Peanut Co. Los Angeles, Calif."

On June 19, 1944, William J. Daze, claimant, having admitted the allegations of the libel, judgment of condemnation was entered and the product was ordered released under bond to be brought into compliance with the law, under the supervision of the Food and Drug Administration.

5635. Alleged adulteration of popcorn. U. S. v. 55 Cases of Popped Corn and 20 Cases, 25 Cases, and 25 Cases of Popcorn. Tried to the court. Decrees entered ordering dismissal of the case and the release of the product to the claimant. (F. D. C. No. 10682. Sample Nos. 42849–F to 42851–F, incl., 42853–F.)

Analysis showed that this product was popped popcorn with added artifically colored mineral oil and salt.

On September 10, 1943, the United States attorney for the District of Idaho filed a libel against 55 cases, each containing 24 packages, 20 cases, each containing 60 packages, and 50 cases, each containing 72 packages, of popcorn, at Moscow, Idaho, alleging that the article had been shipped in interstate commerce on or about July 27 and 29 and August 18, 1943, from Spokane, Wash., by the Masterson Food Products Co. and Hol-Grain Products; and charging that it was adulterated. The adulteration charges are set out in the court's opinion. The article was labeled in part: (Packages) "Masterson Food Products Popped Corn [or "Popcorn"]. Ingredients Popcorn, Mineral Oil, Salt (If colored or flavored U. S. Certified coloring and flavoring used)."

On December 4, 1943, Mason, Ehrman & Company, Moscow, Idaho, having appeared as claimant, the case came on for trial before the court without a jury. After the taking of testimony had been concluded, the case was taken under advisement by the court, and on December 20, 1943, the court handed down the following memorandum opinion:

CLARK, *District Judge:*

"The libel of information in this case seeks destruction of four interstate shipments of popped corn charged to have been adulterated within the meaning of

21 U. S. C. A. in that: '342 (b) (1) in that a valuable constituent, namely butter or an edible vegetable oil, has been in whole or in part omitted'; '342 (b) (2) in that a substance consisting of popped corn with added artificially colored non-nutritive mineral oil and salt has been substituted for popcorn (or popper corn) which the article purports to be'; '342 (b) (3) in that inferiority has been concealed by the addition of artificial color'; '342 (b) (4) in that mineral oil has been mixed or packed therewith so as to reduce its quality or strength or make it appear better or of greater value than it is'; '343 (b) in that it is offered for sale under the name of 'popped corn' (55 cases) and 'popcorn' (20 cases and the two 25 cases), the same being the name of another food, 'popped pop corn,' to which has been added melted butter or vegetable oil.'

"The Government relies mainly on subsection 343 (b) and contends under this subsection that the corn in question was not popped popcorn because melted butter or vegetable oil was not used in preparing it for the market. In other words, that popped popcorn has a definite and distinct definition and that if any other ingredients were added to popped popcorn than butter or vegetable oil, it was not popped popcorn, and in view of the fact that in the instant case, mineral oil was used, it was an adulterated food.

"This libel is brought under subdivision (b) of Section 342 Title 21 U S C A—the Food and Drug Act, which is as follows: '(1) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (2) if any substance has been substituted wholly or in part therefor; or (3) if damage or inferiority has been concealed in any manner; or (4) if any substance has been added thereto or mixed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.'

"The Food and Drug Act was passed to protect the public health and should be construed liberally to meet the purpose for which it was enacted and the Court must endeavor to protect the public from interstate commerce in food products so adulterated as to injure or endanger health and also to see to it that food products are so branded that the consumer would know that there was no misrepresentation as to its substance and that the food purchased was what it purported to be.

"The popped corn in question was branded plainly on each package as follows: 'Masterson's Food Products Popped corn Ingredients: Popcorn, Mineral Oil, Salt (If colored or flavored U S Certified coloring and flavoring used. * * * Masterson Food Products Co., Spokane Washington Net Weight 5 ounces When packed.' The only change in the branding on the various packages being as to the weight, which was according to the size of the package. So in the first instance there is no misbranding and the consumer was fully advised as to the contents of the various packages. There was no deceit practiced in this matter and there is no contention on the part of the Government that there was. So it leaves only two questions for the Court.

"First, is the food product in question popped popcorn?

"Second; has any valuable constitutent been in whole or in part abstracted therefrom, or has any substance been substituted in whole or in part therefor, or is there any damage or inferiority that has been concealed in any manner, or has any substance been added thereto or mixed or packed therewith so as to increase its bulk or weight or reduce its quality or strength, or make it appear better or greater than it is?

"I can see little merit in the contention that the article of food contained in the packages branded as hereinbefore stated was not popped popcorn. It would be just as reasonable to say that if the corn so popped had not had salt, butter or vegetable oil used in its manufacture and preparation that it would not have been popped popcorn, and it is plain from the evidence introduced in this case that there is no exact formula used in the preparation of popcorn for the market. In the case of W. B. Wood Mfg. Co., v. United States 292 Fed. 133, the Court said: 'The Standard set by the statute is not what is customarily done by manufacturers but what is properly done by them * * *'. Whether Mineral oil has ever been used heretofore, the Court is not advised but the Court is satisfied that there is no established formula for its preparation, and the Court is also satisfied that the corn in question is popped popcorn, and so holds.

"On the second question there is no evidence before the Court showing that mineral oil in the quantities used would be injurious to the public health, nor is there any reason shown why the popcorn as prepared and branded should not be consumed by the public, nor that it is adulterated within the meaning of the statute, and as there is no proof of these facts, the popped corn could not be found to be adulterated within the meaning of the statute.

"Realizing full well the duty of the Court to protect the public from interstate commerce in food products injurious to the public health and having in mind the importance of the strict enforcement of the food and drug act, and giving the most liberal construction to the Government's case, the Court is of the opinion that the libel of information is not supported by the evidence and should be dismissed. An Order will be entered."

On December 20, 1943, judgment was entered dismissing the case, and on December 29, 1943, an order was entered for the release of the goods to the claimant.

5636. Adulteration of rice. U. S. v. 90 Bags of Rice. Consent decree of condemnation. Product ordered released under bond for segregation and destruction of unfit portion. (F. D. C. No. 12643. Sample No. 67548–F.)

This product had been stored under insanitary conditions after shipment in interstate commerce. Some bags had been gnawed by rodents and rodent excreta and urine stains were found on the bags. Examination of samples taken from this lot showed that it had been contaminated with urine and contained rodent excreta.

On June 7, 1944, the United States attorney for the Southern District of Ohio filed a libel against 90 bags of rice at Cincinnati, Ohio, alleging that the article, which was in the possession of the Cincinnati Terminal Warehouses, Inc., had been shipped in interstate commerce on or about December 6, 1943, from Chicago, Ill.; and charging that it was adulterated in that it consisted in whole or in part of a filthy substance and in that it had been held under insanitary conditions whereby it might have become contaminated with filth.

On June 13, 1944, the Mills Cincinnati Restaurant Co., claimant, having admitted the truth of the allegations of the libel, judgment of condemnation was entered and the product was ordered released under bond for segregation and destruction of the unfit portion under the supervision of the Food and Drug Administration.

5637. Adulteration of rice. U. S. v. 129 Bags and 103 Bags of Rice. Decrees of condemnation. One portion ordered released under bond to be reprocessed; remainder ordered destroyed or reprocessed for animal feed. (F. D. C. Nos. 11001, 11478. Sample Nos. 34297–F, 49012–F.)

On November 3 and December 29, 1943, the United States attorney for the Northern District of Ohio filed libels against 232 bags, each containing 100 pounds, of rice at Youngstown and Cleveland, Ohio, alleging that the article had been shipped in interstate commerce within the period from on or about September 28, 1942, to March 22, 1943, by the Southern Rice Sales Co. from DeWitt, Ark., Houston, Tex., and Rayne and Crowley, La.; and charging that it was adulterated in that it consisted in whole or in part of a filthy substance because of the presence of one or more of the following: Insects, insect fragments, larvae, pupae, cast skins, and rodent hair fragments. The article was labeled in part: "21 Sorico Extra Fancy Fort Una," or "River Brand Rice Extra Fancy Blue Rose Uncoated."

On November 29, 1943, the Mahoning Valley Flour Company, Youngstown, Ohio, claimant for the lot at Youngstown, having admitted the allegations of the libel, judgment of condemnation was entered and the product was ordered released under bond to be reprocessed under the supervision of the Food and Drug Administration. This portion was fumigated and cleaned, and the rejected material was destroyed. On May 26, 1944, no claimant having appeared for the remaining lot, judgment of condemnation was entered and the product was ordered destroyed or reprocessed for animal feed.

5638. Adulteration of rye chops. U. S. v. 43 Bags of Rye Chops. Decree of condemnation and destruction. (F. D. C. No. 10466. Sample No. 52821–F.)

On August 23, 1943, the United States attorney for the Eastern District of Virginia filed a libel against 43 bags of rye chops at Norfolk, Va., alleging that the article had been shipped on or about March 25, 1943, by the Atkinson Milling Co., from Minneapolis, Minn.; and charging that it was adulterated in that it consisted in whole or in part of a filthy substance because of the presence of insects and larvae. It was labeled in part: (Tag) "Freedom Rye Chops."

On November 19, 1943, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.